

**FILED**

JAN 11 2005

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

DONALD J. BEARDSLEE, )

Petitioner-Appellant )

v. )

JEANNE S. WOODFORD, )

Director of the Department of )  
Corrections, )

JILL L. BROWN, Warden )

And Does 1-50 )

Respondents-Appellee )

CA # 05-15042

DC # C 04-5381 JF

PRELIMINARY  
INJUNCTION APPEAL

EXECUTION DATE  
IMMINENT

**REQUEST FOR ARGUMENT AND DECISION BY MERITS PANEL**

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

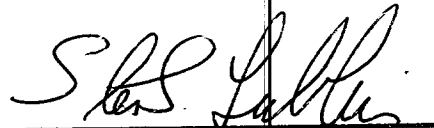
HONORABLE JEREMY FOGEL  
United States District Judge

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DONALD J. BEARDSLEE

Pursuant to Ninth Circuit Rule 3-3(c), appellant requests oral argument and that this preliminary injunction appeal be heard by the merits panel in light of the serious constitutional questions involved in this appeal.

DATED: January 10, 2004

Respectfully submitted:

A handwritten signature in cursive script, appearing to read "S. S. Lubliner", is written over a horizontal line.

Steven S. Lubliner  
Attorney for Donald Beardslee

## **PROOF OF SERVICE**

I, Steven S. Lubliner, certify and declare under penalty of perjury that I: am a citizen of the United States; am over the age of 18 years; am in practice at the address indicated; am a member of the State Bar of California and the Bar of this Court; am not a party to or interested in the cause entitled upon the document to which this Proof of Service is affixed; and that I served a true and correct copy of the following document(s) in the manner indicated below:

### **APPELLANT'S OPENING BRIEF**

### **APPELLANT'S EXCERPTS OF RECORD (3 volumes)**

### **REQUEST FOR ARGUMENT AND DECISION BY MERITS PANEL**

### **EMERGENCY MOTION FOR STAY OF EXECUTION**

- ☐ by today depositing, at Petaluma, California, the said document(s) in the United States mail in a sealed envelope, with first-class postage thereon fully prepaid (and/or):
- ☐ via facsimile machine, pursuant to California Rules of Court, rule 2008. The facsimile machine I used complied with Rule 2003, and no error was reported by the machine. The phone number for the sending machine is (707) 789-0515. Pursuant to Rule 2008(e)(4), I caused the machine to print a record of the transmission, a copy of which is attached to this declaration.
- ☒ by today personally delivering the said document(s) to the person(s) indicated below in a manner provided by law, by leaving the said document(s) at the office(s) or usual place(s) of business, during usual business hours, of the said person(s) with a clerk or other person who was apparently in charge thereof and at least 18 years of age, whom I informed of the contents.

Dane R. Gillette  
Senior Assistant Attorney General  
Office of the Attorney General  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-3664

Executed in Petaluma, California on January 11, 2005

